

This is Exhibit H of  
the Affidavit of Lindsay Lorimer  
sworn February 15, 2002

  
A commissioner, etc

Court File No. 00-CV-199551CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

DANNY A. JOANISSE and  
VANCE HAMILTON EGGLESTONE .

Plaintiffs

-and-

ELLIOTT THOMPSON BARKER, GARY J. MAIER and  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**PLAN OF PROCEEDING**

**INTRODUCTION**

1. The *Class Proceedings Act* requires a workable Plan to be into place as part of the Certification process. The solicitors for the Plaintiffs in the within action propose that the final Plan involve input by the solicitors for the Defendant and this Honourable Court. The Plaintiffs hereby propose the following draft Plan of Proceeding.

**NOTICE PROGRAM**

2. The Court should settle the form and content of a notice notifying class members that the court has certified this action as a class proceeding ("Notice").
3. The Notice should be generally in accordance with the Notice document attached to the Plaintiff's Solicitors' affidavit at Exhibit "C".
4. The Court should direct that Notice be:

- (a) sent by regular mail to the addresses of all class members known to the parties. To assist in the mailing of notice to known class members, the Court shall grant an order requiring the Defendant Crown to provide Class Counsel with the names and last known addresses of any class members which are known to the Defendant Crown;
  - (b) published once in a weekend edition of the Toronto Star and Toronto Sun, as well as a daily edition of Today and Metro, and a weekly edition of Outreach;
  - (c) mailed by Class Counsel to each psychiatric hospital in Ontario together with a request that Notice be placed by that hospital in a prominent location on their premises, such as a notice board, for a reasonable period of time;
  - (d) forwarded by Class Counsel to any person who requests it; and
  - (e) posted on Class Counsel's web site.
5. The cost of notice shall be borne by the Defendant.
6. Class Members shall have 90 days from the date of issuance of notice to opt out of the proceeding. They may do so by providing written notice of their intention to do so to Class Counsel.

#### **DOCUMENTARY PRODUCTION, EXAMINATIONS FOR DISCOVERY AND EXCHANGE OF EXPERT REPORTS**

7. Following class certification the Plaintiffs will ask Mr. Justice Cullity to set a schedule for the delivery of documentary productions, the conduct of examinations for Discovery, and the exchange of expert reports.

#### **COMMON ISSUE TRIAL**

8. The Common Issue trial will resolve the following common issues for the Class.
- 1. Whether human experimentation took place at Pentaguishine, and if so, what was the nature, duration and extent of that experimentation?
  - 2. Whether the Defendant Doctors breached a duty to Class members?
  - 3. Whether the Defendant Crown breached a duty to Class members?

4. Whether the Class is entitled to an award of punitive damages from one or both of the Defendants?

### **THE MATRIX: INDIVIDUAL DAMAGE TRIALS**

9. If the Plaintiffs are successful at the common issue trial, the Plaintiffs anticipate that following the common issues trial there will be a series of mini-trials to assess individual damages for class members.

10. The Plaintiffs will endeavour to organize the damage claims of class members into categories, according to their severity, effectively creating a "matrix" for the assessment of damage claims.

11. It is anticipated that after a few individual damage trials have been conducted, precedents or "benchmarks" may be established for the assessment of various categories of damages within the matrix which may speed the resolution of the remaining claims. The use of Rule 49 settlement offers may also assist in this regard.

### **DAMAGE DISTRIBUTION**

12. Individual class members will receive damages as assessed through individual damage trials.

13. If the Court makes an award of punitive damages to the Class, this award will be paid into court. Class Counsel will thereupon make submissions to the court as to an appropriate means for distribution. This may include a *pro rata* distribution, distribution according to a formula, multiple or ratio of class member individual damages, a *cy pres* distribution, or some other distribution method.